



## CITY of THE DALLES

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# AGENDA STAFF REPORT

## CITY OF THE DALLES

MEETING DATE:	AGENDA LOCATION:	AGENDA REPORT #
June 22, 2015	Public Hearing 11-A	Supplement to #15-049

**TO:** Honorable Mayor and City Council

**FROM:** Gene E. Parker, City Attorney

**THRU:** Nolan K. Young, City Manager

**DATE:** June 23, 2015

**ISSUE:** Hearing on appeal filed by Norman Duncan for denial of transient merchant license.

**RELATED CITY COUNCIL GOAL:** None.

**PREVIOUS AGENDA REPORT NUMBERS:** None

**BACKGROUND:** In the Agenda Staff Report previously provided to the City Council, I indicated that the area where Mr. Duncan was seeking to conduct the proposed transient merchant activity was under the jurisdiction of the Oregon Department of Transportation (ODOT). I have subsequently learned from ODOT staff that this area appears to be subject to both the jurisdiction of the City and ODOT.

Enclosed with this staff report is a copy of a photograph provided to me by Scott Peters, the Operations Coordinator for the local ODOT highway District 9. The photograph shows a portions of the gravel area north of Sixth Street. This unimproved gravel area had been a source of enforcement problems for the City Code Enforcement Officer, caused by persons who would park vehicles in the area and display items for sale without obtaining a transient merchant permit.

To assist the City Code Enforcement Officer, representatives from ODOT reestablished the right-of-way line for Sixth Street. Under a jurisdictional transfer agreement, ODOT assigned the

jurisdiction for this portion of right-of-way for Sixth Street to the City in 2005. ODOT placed large boulders on the re-established right-of-way line for Sixth Street. This was designed to discourage persons from using the portion of right-of-way under the City's jurisdiction from parking vehicles to sell goods, as well as to discourage such use upon the portion of right-of-way to the north of the large boulders, which apparently is under the jurisdiction of ODOT.

General Ordinance No. 97-1217 provides that no one shall occupy or encroach upon right-of-way which is under the jurisdiction of the City without the City's permission. City staff concurs with the position outlined by Mr. Peters that any transient merchant activity alongside this portion of Sixth Street would create a traffic safety hazard, and recommends that the Council not consider granting any permission to Mr. Duncan to conduct any transient merchant activity in this portion of the Sixth Street right-of-way. If Mr. Duncan were to seek to conduct such activity in the portion of right-of-way which is under ODOT's jurisdiction, it is my understanding that ODOT would continue to take the position that such activity would not be allowed because it creates a safety hazard.

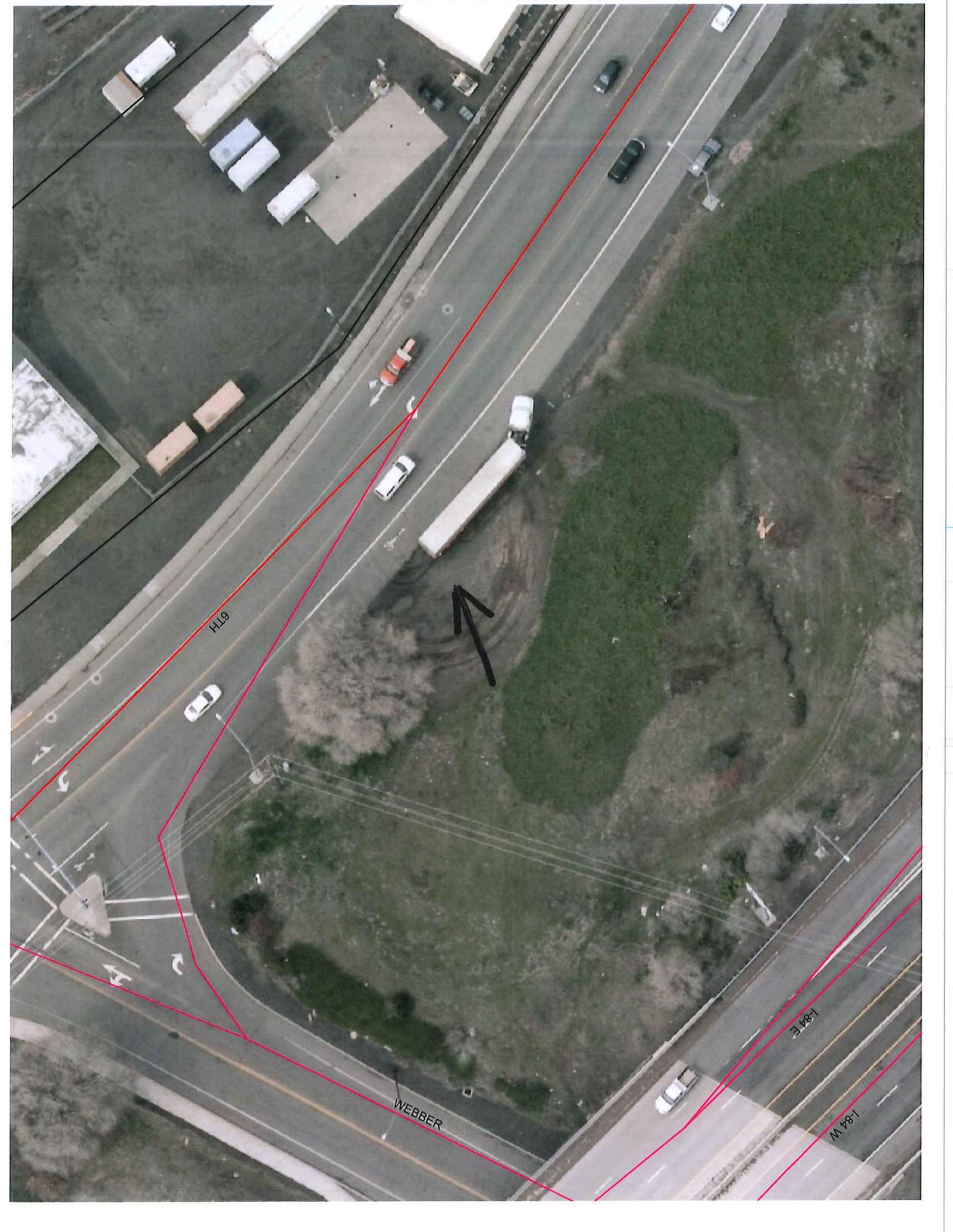
Mr. Duncan contacted my office this afternoon and asked if there was any other portion of right-of-way in the vicinity of the intersection of 6<sup>th</sup> and Webber where he could be allowed to conduct his sales activity. Included with this staff report is a second aerial photograph which shows the corner of West 6<sup>th</sup> and Webber. The area where the large semi-truck is parked is the area which is now blocked off with the large boulders. It is my understanding that the area that Mr. Duncan may be proposing as an alternate site is that area that begins to east of the large tree shown on the photograph and continues around the corner alongside Webber Street.

There is no sidewalk in this area, and the adjacent streets are heavily traveled. City staff believes this area would present the same concerns regarding the potential for a traffic safety hazard, which prompted the placement of the boulders along the 6<sup>th</sup> Street right-of-way, and that the Council should not consider granting permission to conduct any transient merchant activity in this portion of City public right-of-way.

**BUDGET IMPLICATIONS:** None.

**ALTERNATIVES:**

- A. Staff Recommendation. City staff continues to recommend that the appeal filed by Mr. Duncan be denied, for the reasons set forth in the original staff report.

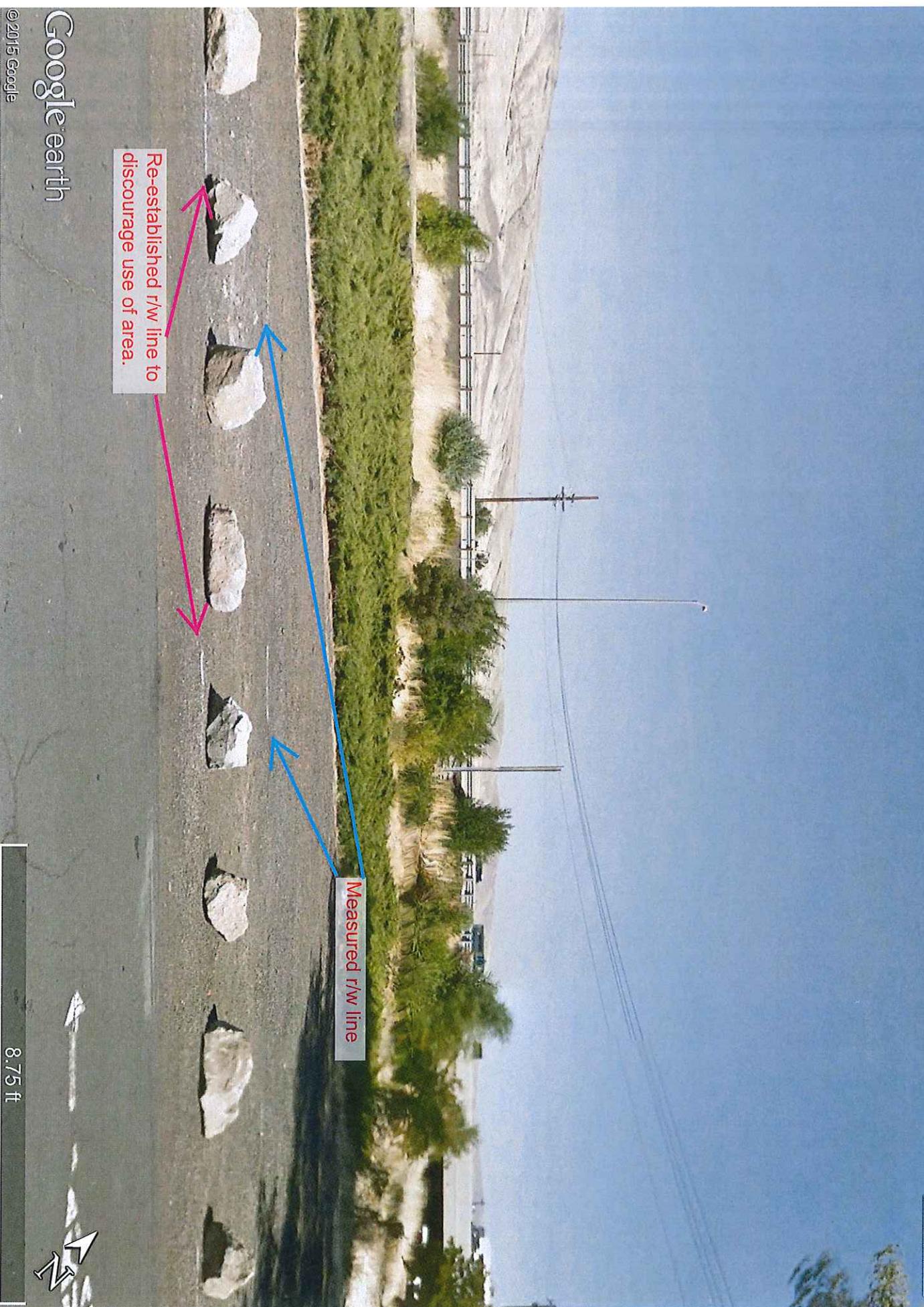


6TH

WEBBER

I-84 E

I-84 W



Re-established r/w line to discourage use of area.

Measured r/w line

